

*In the Matter of Atlantic City 2010 Temporary Layoffs*

CSC Docket No. 2011-2939

**(Civil Service Commission, decided November 22, 2011)**

The Government Workers Union (union) requests relief from the Civil Service Commission (Commission) regarding the temporary layoffs of employees of Atlantic City which took place in 2010.

By way of background, the Division of State and Local Operations approved the temporary layoff of employees in various departments of Atlantic City, including the Department of Public Works. The effective dates of the layoffs were August 2, August 16, September 7, September 20, October 1, October 12, October 25, November 12, November 26, and December 10, 2010.

In the instant matter, the union claims that the appointing authority did not implement the temporary layoffs in accordance with *N.J.A.C. 4A:8-1.1A*.<sup>1</sup> It indicates that the appointing authority did not close the entire layoff unit for the Department of Public Works. Specifically, it states that several employees serving in boiler operator titles in the Department of Public Works worked on the scheduled layoff dates of October 25, 2010 and November 12, 2010. Some of the employees also received overtime pay. Further, the union claims that Atlantic City did not file exemptions for these employees to work. Therefore, it requests “corrective/remedial” action be taken.

In response, the appointing authority, represented by Steven S. Glickman, Esq., acknowledges that all employees in an affected department must be temporarily laid off at the same time. However, it contends that based on a State law, which it does not cite, “black seal” operators must be on duty at all times when a boiler is operating. Boilers were operational during a part of the furlough cycle. Thus, while the appointing authority admits that the boiler operators were not temporarily laid off, it argues that it could not lay off the boiler operators because of the conflicting law. Therefore, it maintains that the boiler operators are exempt because they are required by the State to remain on duty. The appointing authority contends that “[t]o rule otherwise, would prevent the municipality . . . from implementing furloughs, a clear violation of public policy.”

## **CONCLUSION**

Initially, in *In the Matter of Department of Personnel Employees*, Docket No. A-4617-92T3 (App. Div. May 9, 1994), the Appellate Division upheld the ability of a

---

<sup>1</sup> *N.J.A.C. 4A:8-1.1A* codified a mechanism for implementing temporary layoffs. The regulation was repealed on December 21, 2009. However, temporary layoffs are permissible under Civil Service law so long as the temporary layoff is accomplished through the complete closure of an entire layoff unit in accordance with *N.J.A.C. 4A:8-1, et seq.*

Civil Service employer to impose temporary layoffs on its employees through the closure of an entire layoff unit. Such a temporary layoff must proceed in accordance with Civil Service law and rules governing layoffs. *See also, In the Matter of Emergency Temporary Layoff Rule*, Docket No. A-3626-08T2 (App. Div. April 17, 2009); *In the Matter of Temporary Layoffs, City of Newark and the Newark Public Library* (CSC, decided October 7, 2009). Moreover, *N.J.A.C. 4A:8-1.5(c)* provides in part that in local service, the layoff unit shall be a department in a county or municipality, an entire autonomous agency, or an entire school district. *See also, N.J.S.A. 11A:8-1(c)*.

In the instant matter, there is no dispute that a temporary layoff was in effect in the Department of Public Works on October 25, 2010 and November 12, 2010. The appointing authority, however, did not lay off certain employees. It argues that boiler operators were required to be on duty by State law, and thus, these employees were exempt from layoff. As indicated above, in order to have a valid temporary layoff, all employees in a layoff unit must be laid off. Although the repealed regulation, *N.J.A.C. 4A:8-1.1A*, allowed for limited exemptions, there is no current Civil Service law or regulation that permits certain employees in a layoff unit to be exempt during a temporary layoff. Thus, the Commission disagrees that there would be a "clear violation of public policy," if boiler operators were not considered exempt. On the contrary, the appointing authority violated Civil Service law by allowing only certain employees to work in the Department of Public Works during a temporary layoff. The appointing authority could have avoided its claimed conflict by not closing the Department of Public Works. Therefore, in order to make the temporarily laid off employees of the Department of Public Works whole, they are to be granted their base pay for October 25, 2010 and November 12, 2010.

### **ORDER**

Therefore, it is ordered that this request be granted. It is further ordered that the appointing authority compensate all laid off employees of the Department of Public Works with back pay for October 25, 2010 and November 12, 2010. Additionally, personnel records of the employees shall be corrected so that a temporary layoff is not reflected on these days.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.